TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1903.

No. 189.

CHARLES J. GLIDDEN, TRUSTEE, PLAINTIFF IN ERROR,

vs.

JOHN E. HARRINGTON, COLLECTOR.

IN ERROR TO THE SUPERIOR COURT OF THE STATE OF MASSACHUSETTS.

FILED NOVEMBER 24, 1903.

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1 UNITED STATES OF AMERICA, *ss:*

[Seal of the Circuit Court, Massachusetts.]

The President of the United States to the honorable the judges of the superior court of the Commonwealth of Massachusetts, holden at Cambridge, within and for the county of Middlesex, Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said superior court before you, or some of you, being the highest court of law or equity of the State of Massachusetts in which a decision could be had in the suit between John H. Harrington, collector plaintiff and Charles J. Glidden, trustee defendant, in an action of contract wherein was drawn in question the validity of a statute of, or authority exercised under, said State on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under, the United States, and the decision was against the title, right, privilege, or exemption, specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Charles J. Glidden, trustee, as by his complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the thirtieth day of November current, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and custom of the United States, should be done.

Witness, the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the second day of November in the year of our Lord one thousand nine hundred and one.

ALEXANDER H. TROWBRIDGE,
Clerk of the Circuit Court of the United States,
District of Massachusetts,
Per BENJ. H. BRADLEE, *Deputy Clerk.*

Allowed by
ALBERT MASON,
Chief Justice Superior Court.

2 COMMONWEALTH OF MASSACHUSETTS, *Middlesex*, } *ss:*

And now, here, the judges of the superior court make return of this writ by annexing hereto and sending herewith, under the seal of the said superior court, a true and attested copy of the record and proceedings in the suit within mentioned, with all things concerning the same, to the Supreme Court of the United States, as within commanded.

In testimony whereof, I Theodore C. Hurd clerk of said superior court have hereto set my hand and the seal of said court this twelfth day of November A. D. 1901.

[Seal of the Superior Court.]

THEO. C. HURD, *Clerk.*

3 COMMONWEALTH OF MASSACHUSETTS, *Middlesex*, } *ss:*

To all persons to whom these presents shall come, Greeting:

Know ye, that among our records of our superior court, sitting in said county of Middlesex, for hearing cases at law from the first day of January in the year of our Lord one thousand eight hundred and ninety-five to the seventh day of October in the year of our Lord one thousand nine hundred and one, both days inclusive, it is thus contained:—the following being the entire record in the case:—

COMMONWEALTH OF MASSACHUSETTS, *Middlesex*, } *ss:*

[L. S.] To the sheriffs of our several counties or their deputies, Greeting:

We command you to attach the goods and estate of Charles J. Glidden of Lowell in said county, trustee to the value of three thousand dollars and summons the said Glidden (if he may be found in your precinct) to appear before our justices of our superior court, at Cambridge, within and for our said county of Middlesex, on
4 the first Monday of August next: then and there in our said court to answer unto John H. Harrington collector of taxes of the city of Lowell—in an action of contract,—to the damage of the said Harrington (as he saith) the sum of three thousand dollars, which shall then and there be made to appear with other due damages. And have you there this writ, with your doings therein.

Witness, Albert Mason, Esquire, at Cambridge, the sixth day of July, in the year of our Lord one thousand eight hundred and ninety-five.

THEO. C. HURD, *Clerk.*

And the officer who served said writ, made the following return, to wit:

Officer's Return.

MIDDLESEX, *ss:*

JULY 15TH, A. D. 1895.

By virtue of this writ I this day attached a chip as the property of the within-named Charles J. Glidden and at the same time summoned said defendant for his appearance at court as within directed by leaving at his last and usual place of abode a summons of this writ.

GEORGE F. STILES,
Deputy Sheriff.

Fee.

Service	.50
Travel	1.60
	$2.10

Said action was entered in this court on the first Monday of August A. D. 1895, the plaintiff appeared by John J. Hogan, Esquire, and filed the following declaration, viz:—

5 COMMONWEALTH OF MASSACHUSETTS, *Middlesex,* } *ss:*

Superior Court, First Monday of August, 1895.

JOHN H. HARRINGTON, Plaintiff,
vs.
CHARLES J. GLIDDEN, Defendant. } Contract.

And the plaintiff says that on May 1st, 1889 and previous and subsequent thereto, the defendant inhabited and dwelt in said Lowell and was then and there duly ratable and taxable for certain personal estate and property held by him as trustee; and said defendant was accordingly duly rated and assessed by the board of assessors of said city of Lowell to the State, county and city taxes; as such trustee, for the year 1889 the sum of two thousand five hundred and seventy six (2,576) dollars and said rate, assessment and tax was by the said board of assessors, viz: on September 10th, 1889 committed to Van B. Sleeper, collector of taxes of said Lowell and his successors to collect, but he did not collect the same, and resigned the office of collector of taxes of said Lowell about July 22, 1890; and thereafter Austin K. Chadwick was duly elected, sworn and qualified as collector of taxes of the city of Lowell, and said tax was duly committed to him and his successors, but he did not collect the same and resigned the office of collector of taxes of said city on or about March 27th, 1894 and thereafter the plaintiff was duly elected, sworn and qualified and still is the collector of taxes
6 of the city of Lowell; that on June 12, 1895, said rate, assessment and tax was by the board of assessors of said Lowell

committed to the said plaintiff to collect, — all of which the said defendant then and there had notice, and was required to pay the same, but neglected so to do and has wholly neglected and refused to pay said rate and assessment for more than one year after it was committed to the said Sleeper and his successors in said office, by reason of which and by force of the law in such cases made and provided an action hath accrued to the plaintiff collector as aforesaid to sue, and recover the said sum of two thousand five hundred and seventy-six (2,576) dollars as his proper debt. Yet the said defendant hath not paid the same or any part thereof, but neglected so to do, and owes the plaintiff therefor.

Second count. And the plaintiff further says that the city of Lowell duly fixed October 20th, 1889 as the time within which said taxes assessed therein for that year should be paid and by its city council voted that on all such taxes remaining unpaid after said October 20th 1899, interest should be paid at the rate of seven per centum per annum and the said tax of two thousand five hundred and seventy-fix (2,576) dollars, not having been paid on said October 20th, 1899, interest to the amount of eight hundred eighty-two and twenty-eight (882.28) dollars has accrued thereon under said vote at the rate of seven per centum per annum from said October
20th, 1889 to the date of this writ and has become by force of
7 law a part of said tax, and assessment to said defendant for said year 1889, and the defendant owes the plaintiff collector as aforesaid the said sum of eight hundred eighty-two dollars and twenty-eight cents (882.28).

On the thirteenth day of August, A. D. 1895, the defendant appeared by H. N. Sheppard Esq., and Messrs. Burke, Marshall & Corbett, and filed the following answer, viz:—

"COMMONWEALTH OF MASSACHUSETTS, *Middlesex*, } ss:

Superior Court.

JOHN H. HARRINGTON, Collector of Taxes for the City of Lowell,
vs.
CHARLES J. GLIDDEN.

Defendant's Answer.

And now comes the defendant in the above-entitled action and answering says that he denies each and every allegation, item and particular in the plaintiff's writ and declaration contained.

And the defendant further answering says: That the cause of action mentioned in the plaintiff's writ did not accrue within six years before the suing out of the plaintiff's writ."

8 And on the twenty-second day of December, A. D. 1898, the cause was submitted to a jury, sworn according to law to try the same, who return their verdict therein, upon oath, that is to say: "The jury find for the plaintiff, and assess the damages in

the sum of four thousand two hundred twenty-nine dollars and ninety-two cents."

Verdict.—Returned and affirmed in court this twenty-second day of December, 1898.

Whereupon the defendant, being aggrieved at the rulings, opinions and directions of the court in matters of law, alleged exceptions thereto, which, being reduced to writing were filed with the clerk, presented to the court, and allowed by the presiding judge, which exceptions are as follows, to wit:

9 COMMONWEALTH OF MASSACHUSETTS, *Middlesex*, } *ss:*

Superior Court, December Sitting, 1898.

JOHN H. HARRINGTON, Collector,
vs.
CHARLES J. GLIDDEN, Trustee.

Defendant's Exceptions.

This is an action of contract to recover the sum of $2576 and interest alleged to be a legal tax for the year 1889 upon the defendant, a resident and inhabitant of the city of Lowell, as a trustee. The pleadings are made part of this bill and may be referred to. At the trial plaintiff introduced in evidence the charter of the Erie Telegraph and Telephone Company, a copy of which is annexed hereto, marked "A," and made a part hereof. It appeared by the records of the city of Lowell, introduced in evidence by the plaintiff, that Van B. Sleeper was duly elected and qualified, and acted as city treasurer and collector of taxes for the city of Lowell from May 7, 1889; that July 15, 1890, he resigned said offices; his resignation was duly accepted and he was succeeded therein by Austin K. Chadwick, who was duly elected and qualified and who acted as such treasurer and collector of taxes; that March 27, 1894, said Austin K. Chadwick resigned said offices; his resignation was duly accepted and he was succeeded by John H. Harrington, who was duly elected and qualified and who acted as such treasurer
10 and collector of taxes; that September 7, 1895, said John H. Harrington resigned said offices; his resignation was duly accepted and he was succeeded by Charles F. Coburn, who was duly elected and qualified and has continued to act in said offices of city treasurer and collector of taxes to the present time. The tax herein sought to be recovered was committed to said Van B. Sleeper for collection, by a warrant of the assessors of the city of Lowell, on the tenth day of September, 1889, and afterwards, the said Sleeper not having collected the same, or any part thereof, the same was committed to said Austin K. Chadwick for collection on the fourteenth day of August, 1890, and afterwards, said Chadwick not having collected the same nor any part thereof, the same was committed to said John H. Harrington for collection on the twelfth day of June, 1895. Evidence also was introduced by the plaintiff tending to

show that the city clerk and each of the members of the board of assessors who assessed the tax in question were duly elected and qualified; and that the resolution marked "Exhibit 4" was given by the city clerk to the assessors. Plaintiff offered evidence tending to show that, before proceeding to make the assessments for the year 1889, the assessors, in the latter part of April of that year, gave notice thereof to the inhabitants of the city of Lowell by posting in public places in the several wards of said city notifications that they were about to assess taxes, and requiring the inhabitants to bring in to the assessors, on or before June 15 of that year, true lists of all their polls and personal estates not exempt from taxation.

ROBERT L. READ, called by the plaintiff, testified: He resided in Lowell and was one of its assessors for the years 1888 and 1889, and also held the position of secretary of the board. He produced the record book of said board of assessors and read a resolution recorded March 29, 1889, as follows: "George S. Cheney and Abel Wheeler of the board were appointed a committee to inquire into telephone matters for taxation. H. C. Dexter and J. E. Maguire, F. N. Edgell, appointed a committee to visit manufacturing cities and make inquiries as to the manner of corporation taxes in such cities. (Signed) Robert
11 L. Read, secretary." He further read from said book a record of April 11, 1889, as follows: "The committee appointed to look after telephone matters advised that a suitable person be sent to Albany to look up matters in that direction, and said committee was authorized to use their discretion in the matter." He further read from said book a record of July 25, 1889, as follows: "Voted to tax the directors of the Erie Telephone Company, as trustees, $160,000 each." He further testified that this was the entire contents of the record relative to the levy of the tax in this case, and that the records of the assessors fail to show any report of the committee to inquire into telephone stocks. The following questions and answers constitute a part of the cross-examination of this witness:

Q. Did you take any part in arriving at the valuation of the property assessed to any of these defendants?

A. Nothing said except in general meeting; we talked over the matter as reported to us by the party who went to Albany to ascertain in regard to it. Of course, I voted upon that subject as all the rest did.

Q. Any record of that?

A. Except we voted to tax the directors $160,000 each.

Q. Well, did you take any part in arriving at the valuation of the items making up that $160,000?

A. No, sir.

Q. Was there any vote upon that?

A. No, sir.

Q. Are there any books that show what items made up that aggregate of $160,000?

A. Unless the valuation book.

Q. The valuation book?
A. Yes, sir.

He further testified on cross-examination that he heard the evidence put in by Mr. Peirce, employed by the board to look
12 into telephone matters, but could not remember the evidence of Mr. Peirce, it being nine years ago. Could not recollect a single word. Did not ascertain the particulars of the estate assessed, and had no knowledge of its value except such as he gained by the statements of Mr. Peirce. Supposed Mr. Peirce knew the value of telephone stocks. Judged that he had dealt in them. Did not remember of any one telling him so. Made no effort to get any information further than that received from Mr. Peirce. "He told us that the property that we were talking about was worth $1,600,000. Property pertaining to the Erie, Southwestern, Northwestern, and Cleveland, as I remember," or that was the understanding witness got from Mr. Peirce's statements. Mr. Peirce said that he had been to Albany to peruse the books and found out that seven directors of the Erie owned part of it. Could not remember whether Mr. Peirce stated that he had found any record in Albany showing that Mr. Glidden had stock in any one of these companies. Could not remember whether Mr. Peirce had said that Mr. Glidden owned stock in the companies mentioned. Did not remember whether Mr. Peirce had told of finding any record of any property whatever owned by Mr. Glidden as trustee.

ABEL WHEELER, called by the plaintiff, testified: He resided in Lowell in that part of ward 8 which was formerly old ward 4. He was an assessor of Lowell and had been since January 7, 1889, and had been continuously employed as such. In 1889 he was a ward assessor for ward 4. George S. Cheney was then chairman of the board. Mr. Cheney has since deceased. Witness here produced the book called "the valuation book" and testified: That he had read its contents to the clerk, who wrote them in, and he afterwards examined them to see that they were correct. The book covers assessments for the year 1889 and had been continuously in the custody of the witness, with other books. Witness here read assessment as it appears in the copy thereof, hereto anexed, marked "B," and made a part hereof. At the end of the book the valuation is signed by the assessors and gives the table of
13 aggregates for the city of Lowell on polls, property, taxes, etc., as assessed May 1, 1889. Witness stated that the words "except as below" in the column numbered 5 of Exhibit "B" means that there was an abatement to the amount of the 50 shares Fort Payne Coal and Iron Company. Witness had heard Mr. Read testifying on the stand and reading from the record made by him as secretary of the board, wherein it was voted to tax the directors of the Erie Telephone and Telegraph Company, and the assessment which he had just read was one made in pursuance of that vote. Witness was one of the committee appointed to investigate matters in reference to telephone stocks; George S. Cheney was the other

member of the committee. In pursuance of the authority given this committee, they employed an expert to look up the foreign corporations, and this expert was directed to look up stock held by the Erie Telegraph and Telephone Company. He reported stock of that company held by individuals in Lowell and mentioned seven trustees, and among them the defendant. The trustees mentioned were trustees of the Erie Telegraph and Telephone Company. The expert told the committee that the seven directors of the Erie Telegraph and Telephone Company, of whom the defendant was one, held stock in trust for the Erie Telegraph and Telephone Company, and that the Erie Telegraph and Telephone Company was a corporation organized in New York. The defendant afterwards made an application to the assessors for an abatement of this tax assessed to him as trustee, and a hearing was had thereon. In fact, a number of hearings. The expert employed by the committee was Edward B. Peirce of Lowell. He was employed in 1889, along about April, and remained in their employ about a month.

The following questions and answers constituted part of the cross-examination of this witness:

Q. Did you obtain information relative to this property upon which you made this assessment from anybody else than from this expert?

A. No, sir; that is, I won't say — nothing only what we could glean by ourselves, that we hear, we had nothing else only what we would pick up or get at same as we make any assessment.

14 Q. Do you recall anything that you did as a committee to investigate this matter?

A. No, it is so long ago I don't recall it.

Q. So far as your recollection goes now, is the information upon which you acted only that given to you by Mr. Peirce?

A. That is the only one that we employed.

Q. So far as your recollection goes, is the only knowledge which you had then upon which you acted, what was given to you by Mr. Peirce?

A. The only definite knowledge.

Witness did not go to Albany, nor did Mr. Cheney, so far as he could remember. The items that went into the making up of the aggregate of $160,000 assessed to Mr. Glidden, as trustee, were those the assessors got information of in regard to the Erie Telegraph and Telephone Company. Witness could not tell what the items were. He did not know that Mr. Glidden held any money, as trustee, thought it was stock. Did not know that Mr. Glidden had any income as trustee on which this assessment was made. The items assessed to him as trustee were stock of which he got information from the expert, and witness could not recall any stock upon which the assessment was made. The only recollection that he had as to what the expert told him was that they talked the matter over and figured and took it under consideration, and there was, as he understood it, about $1,600,000 worth held by ten (10) trustees, of which defendant was one, and to whom one-tenth was assessed.

The expert was a resident of Lowell and was a dealer in second-hand machinery for many years, and think he was then. Did not know what you would term his business. Witness did not remember who recommended him or how they came to employ him. Did not know that he had anything to do with telephone stocks. His qualification as an expert was that he was a very bright man and a man right up with the times. Witness had seen a number of shares in different corporations owned by him. Witness did not know that he owned any telephone shares or that he acted as an appraiser in putting values on telephone shares. He named three companies, subcompanies of the
15 Erie Telegraph and Telephone Company, the Northwestern, the Southwestern, and the Cleveland, and this assessment was based upon these shares and any stock that he held, as trustee, but witness did not know of anything else beside the Northwestern, the Southwestern, and the Cleveland, shares held by the defendant as trustee. Could not remember whether he had in mind at the time of this assessment any other stocks except the Southwestern, Northwestern and Cleveland, held as trustee by the defendant, and did not remember whether he had learned of any other. Witness could not remember what valuation was put upon Northwestern shares, or Cleveland shares, or the Southwestern shares, but presumed the assessors placed a valuation on every one of them. The items of these three companies made up the $160,000, but witness could not recall how much of the $160,000 was put upon the shares in each of these companies; the assessors figured up each company and there must have been a separate estimate of what it should be assessed for. Mr. Peirce still resides in Lowell. Witness could not remember that they had the value of the earning capacity of any of the said companies, but said they must have known something about it. He presumed that they got at the value on an estimate based in some way upon the value of the Erie stock, but stated he could not give it now because it was not clear to him just how the assessors did get at it. Witness could not recall that he had ever seen any reports of the Erie subcompanies, but said: "I do not remember in regard to it, I may have seen it—I do not know." Could not say that at the time the assessment was made he had any knowledge of any payment of a dividend by either of the subcompanies. The stock was assessed at what the assessors thought it was worth, but could not tell today what was the value of a share in any of the subcompanies at that time. In answer to the question, "Did you make any effort to get any further information than what was given to you by Mr. Peirce?" he said: "We may have tried to get information, I don't know of anything special." No inquiry was made of the defendant.
16 Witness knew at that time that defendant was a reputed officer in the Erie companies and was a man well posted in the value of telephone stocks. Witness could not remember whether or not he knew anything as to the condition of the franchise, at that time, of the companies, the shares of which form the basis of the assessment. Witness delivered the tax bill, as trustee, personally to the

defendant. This is the tax bill for which this action is brought. It was delivered some time about the first of September, 1889.

FRED N. EDGELL, called by the plaintiff, testified: He was a resident of Lowell and was one of the assessors of Lowell in 1889 and made the assessment that year for ward 6. He had seen a notice posted in his ward during the latter part of April, which required a list to be brought in on or before June 15th. Witness acted with the other assessors in assessing the tax upon defendant, and was present at meetings held to consider the matter. In forming a judgment, the assessors acted upon information they received from a committee appointed to look up the matter, and after receiving this information the assessors conferred together and arrived at their judgment in that way. Witness never owned any telephone shares nor dealt in them prior to the year 1889, nor did he have any knowledge of the value of telephone shares except what was obtained through the committee, and what that information was he could not recall. The board got together and acquired all the knowledge they could. He inquired in every way he could from everybody to find out what shares there were of all kinds—not particularly telephone. Had known Mr. Peirce a good many years. He was a speculator in second-hand machinery and other things. Did not know his private business, of course, but that was ostensibly his business. Never knew that Mr. Peirce dealt in telephone shares. Did not remember what the items were that made up the $160,000. It was put in under the sweeping clause. Could not recall any money held by the defendant as trustee, or that he received any income as trustee, or that he had any stocks as trustee except Erie stocks. Could not
17 remember whether this value of $160,000 was entirely upon the Erie shares or shares of other corporations; part of it was upon Erie shares held by defendant as trustee, and the assessment was made upon such, but other things were also included, although witness could not recall them. Witness did nothing personally, and could not recall any investigation that he made. The committee made all the inquiry and reported to the board; had no other knowledge than that imparted by the committee. Could not recall what report the committee made. Knew that Mr. Wheeler made a report and they acted accordingly. What the detail was hadn't any recollection. Could not recall the way in which they arrived at the valuation of $160,000.

JOHN E. MAGUIRE, called by the plaintiff, testified: He resided in Lowell and was an assessor of taxes there for eight years, commencing in 1883 and ending in 1892. Witness remembered some discussions at the meetings of the board of assessors in 1889 in reference to the taxing of stock in foreign corporations held and owned by inhabitants of Lowell. Defendant was assessed as trustee of the stock known as the Erie, composed of the Northwestern, Southwestern, and Cleveland Telephone Companies. The board understood that he held the stock of the Northwestern, Southwestern, and Cleveland in trust for the Erie Company. The matter of the assessment

of this stock to the defendant and others as trustee, was discussed all through the three or four meetings previous to what is known as Doomsday. On Doomsday the assessment was completed. The basis of the valuation was what the Erie telephone stock was selling for on the market on the first of May. The total number of Erie telephone shares were divided equally among the trustees, seven of whom lived in Lowell, one of them being this defendant; the other three were not taxed because they were not residents of Lowell. Witness could not remember how many shares the defendant owned in these companies. The whole number of shares were divided equally among the ten directors. The board ascertained as best it could the number of shares owned by the Erie Com-
18 pany and divided them equally among the ten directors. Witness did not have any direct knowledge that the defendant held any shares as trustee in the subcompanies of the Erie. Witness believed that it was the Erie shares that were divided, and that no particular number of shares of Cleveland were assessed to the defendant, nor of the Southwestern or Northwestern Companies. Witness did not remember just how he arrived at the number of shares of Cleveland which was assessed to this defendant. Did not think they took any particular number of shares and made an assessment upon those to Mr. Glidden. It was witness' understanding that they took the selling price of the Erie shares, multiplied that by the whole number of shares which the Erie Company was authorized to issue, and divided that aggregate by ten, then assessed that one-tenth as the value to each one of these defendants. Witness believed the assessors understood what the Cleveland plant was worth. Do not know now what it was. Did not believe any record was made. Witness' understanding was that defendant as trustee held a certain amount of Southwestern, Northwestern, and Cleveland, stock which composed the Erie stock and which were assessed as Erie stock. Did not know there were any shares of Erie. Did not understand that there are any Erie shares distinct from the shares of the subcompanies. Witness could not tell why it was not stated in the valuation book for whom the defendant was trustee.

CHARLES J. GLIDDEN, the defendant, testified: He was a resident of the city of Lowell, and had been a resident for many years. Was a resident in 1889. He had been connected with the Erie Telegraph and Telephone Company since its organization in 1889. It was incorporated under the laws of the State of New York. He was now president of the company, and had formerly been its secretary and treasurer from its organization up to about a year ago, when he was elected president. Was secretary and treasurer in the year 1889. Had been connected with the Cleveland Telephone Company, a cor-
poration organized under the laws of Ohio, doing business
19 principally in the city of Cleveland. Had been secretary and treasurer of that corporation until about a year ago, and then president. There were two companies of the name of the Southwestern Telegraph and Telephone Company, one incorporated under the laws of Arkansas and one incorporated under the laws of the

State of New York. He held the office of secretary and treasurer in the Arkansas company and had been the secretary and treasurer of the New York company until a year ago, and then president. The New York company was organized in 1883. The Northwestern Telephone Exchange Company is a corporation organized in 1878 under the laws of the State of Minnesota, doing business in North Dakota, South Dakota, Minnesota and Wisconsin. Had been secretary and treasurer of that company since its organization in 1883 until a year ago, when he was elected president. The Southwestern Companies formerly did business in Arkansas, Texas, and the border of Mexico. Witness was familiar with the condition of the Southwestern, Northwestern, and Cleveland Companies on the first day of May, 1889. Witness was then asked whether or not on the first day of May, 1889, the Southwestern Company of Arkansas, the Southwestern Company of New York, or the Cleveland Company owned any property. The question was objected to by the plaintiff as immaterial and irrelevant, and excluded by the court, and the defendant duly excepted. The following questions were then asked the witness:

Q. Whether or not the Southwestern Company, both of Arkansas and of New York, issued shares of stock?

A. Yes, sir.

Q. Was that true of the Cleveland Company?

A. Yes, sir.

Q. Also true of the Northwestern?

The COURT: This all refers to May, 1889?

A. Yes, sir.

Q. Mr. Glidden, on the first day of May, 1889, did you hold any personal property whatever as trustee?

20 To this question the plaintiff objected and, the court excluding the question, defendant duly excepted. The defendant then offered to prove that the Southwestern of New York, the Cleveland, and the Southwestern of Arkansas, were corporations without any property on the first day of May, 1889, to which evidence the plaintiff objected as immaterial and irrelevant, and the court sustaining the objection and refusing to let defendant so to do, defendant duly excepted. Witness was then asked whether he held any shares in any of these corporations on the first day of May, 1889, as trustee, for any person or corporation, to which question the plaintiff objected as immaterial and irrelevant, and the court sustaining the objection defendant duly excepted. Defendant then offered to prove that all the shares of the capital stock of the Southwestern and Cleveland Companies, on the first day of May, 1889, were owned by the Erie Telegraph and Telephone Company, and in its possession and control, to which evidence the plaintiff objected as immaterial and irrelevant, and the court sustaining the objection and refusing to let defendant so to do defendant duly excepted. Defendant offered to show that three-tenths of the shares of the capital stock of the Northwestern Telephone Exchange Company on the first day of May, 1889, were owned by the American Bell Telephone Company, a corporation under the laws of this Commonwealth,

and in its possession and control, and the remaining seven-tenths by the Erie Telegraph and Telephone Company, and in its possession and control, to which evidence the plaintiff objected as immaterial and irrelevant, and the court sustaining the objection and refusing to let defendant so to do defendant duly excepted. Defendant offered to prove the dealings with the two Southwestern Companies and the Cleveland Company whereby the Erie Company had become possessed of all their property, and owned it on the first of May, 1889, but on the objection of plaintiff the court excluded it as immaterial and irrelevant and refused to let defendant so to do, to which the defendant duly excepted. The defendant offered to prove that upon
the first day of May, A. D. 1889, all the property which
21 formerly had belonged to the Southwestern and Cleveland
Companies was owned and in the possession of the Erie Telegraph and Telephone Company, but upon the objection of the plaintiff the court excluded it as immaterial and irrelevant and refused to let defendant so to do, to which the defendant duly excepted. The defendant offered to prove that upon the first day of May, A. D. 1889, all the business in the territories formerly occupied by the Southwestern and Cleveland Companies and which formerly had been done in the names of these companies then was owned by and done in the name of the Erie Telegraph and Telephone Company, but upon objection of the plaintiff the court excluded it as immaterial and irrelevant and refused to let defendant so to do, to which the defendant duly excepted. The defendant offered to prove that upon the first day of May, A. D. 1889, the taxes and rentals in the territories formerly occupied by the Southwestern and Cleveland Companies were paid by the Erie Telegraph and Telephone Company in its own name and from its own treasury, but upon objection of the plaintiff the court excluded it as immaterial and irrelevant and refused to let defendant so to do, to which the defendant duly excepted. The defendant offered to prove that upon the first day of May, A. D. 1889, the local franchises in the territories formerly occupied by the Southwestern and Cleveland Companies were granted directly to and in the name of the Erie Telegraph and Telephone Company, but upon objection of the plaintiff the court excluded it as immaterial and irrelevant and refused to let defendant so to do, to which the defendant duly excepted. The defendant offered to prove that upon the first day of May, A. D. 1889, the Southwestern and Cleveland Companies earned no income and paid no dividends, and neither received nor paid out any money, but upon objection of the plaintiff the court excluded it as immaterial and irrelevant and refused to let defendant so to do, to which defendant duly excepted. The defendant offered to prove that the franchises by virtue of which business was done from the American Bell Telephone Company to the Cleveland Company expired October
22 1, 1889, and to the Southwestern Company June 1, 1889, and
that upon the first day of May, A. D. 1889, there was no assurance of the renewal of either of these franchises, and that upon the said first day of May these franchises were of no value, but upon objection of plaintiff the court excluded it as immaterial and irrele-

vant and refused to let defendant so to do, to which defendant duly excepted. The defendant offered to prove that the property here attempted to be taxed was also taxed on the first day of May, 1889, in the localities where these various subcompanies had once done business, but on the objection of the plaintiff the court excluded the evidence and the defendant duly excepted. The defendant offered to prove that on the first day of May, 1889, the Erie Telegraph and Telephone Company's shares were largely held by citizens of the Commonwealth of Massachusetts and taxed therein, but upon the objection of the plaintiff the court excluded the evidence and the defendant duly excepted. Defendant offered to prove that on the first day of June, 1889, the shares of the Southwestern Companies and of the Cleveland Company were without any value, but on the objection of the plaintiff the court excluded the evidence and the defendant duly excepted. Witness then testified that the companies which the Erie Telephone Company owned and managed were the Southwestern Telegraph and Telephone Company, the Northwestern Telephone Exchange Company, and the Cleveland Telephone Company, and that the organization of these several subcompanies existed at the date of the trial. They were corporations governed by boards of directors. That the directors of the Erie Telegraph and Telephone Company were not directors of all these subcompanies. They were not all directors of the Cleveland Company and were not the full board of directors of the Northwestern or Southwestern. There were eleven directors of the Northwestern Company, nine or ten of them being directors of the Erie Company at the time of the assessment. That the Cleveland Telephone Company in 1889 had seven or eight directors, that the majority of them were not directors in the Erie; the minority were directors in the Erie. That
23 all the persons who were directors of that company were also stockholders. Those directors who were not directors in the Erie having one share of stock each. The Southwestern Company had nine directors. Of the eleven directors in the Northwestern nine were directors of the Erie Company. There were thirteen thousand shares in the Northwestern Company and the par value was fifty dollars ($50). There were eight thousand shares in the Cleveland Company of the par value of $100. There were two Southwestern Companies, one organized in the city of New York and one under the laws of Arkansas. The one organized in Arkansas is not now in existence, having disappeared in 1883. The Southwestern of New York had a capital stock of $2,000,000 of the par value of $100. They had nine directors, all of whom were directors in the Erie Telegraph and Telephone Company. The organization of all these companies was kept up by regular meetings. The directors of these companies met annually up to May, 1889. The meetings of the Southwestern of New York were held in New York, where the stockholders elected the directors. Witness attended the annual meeting held in June, 1889. There was a quorum of the stockholders present. Twenty thousand shares were voted. Witness could not remember anybody being there but himself. Witness was then a shareholder in the Erie Company under the

laws of the State of New York. The number of shares represented either by person or proxy constituted a quorum. The par value of the Southwestern shares was $100. At the meeting in 1888, I think, Mr. Bennett, then president of the Erie and also of the Southwestern, presided. In that year the president of the Erie for the time being was the president of the several subcompanies. The annual meeting of the Cleveland Company was held in September, 1888. Witness as a rule attended all the annual meetings. The annual meeting was held in Cleveland, Ohio. The resident directors of the Cleveland Company were present beside the witness. They only held one share apiece. There were eight thousand shares in all.

Witness probably voted all the shares. Witness was secre-
24 tary of all these meetings and has preserved the records.
They are now in the custody of the present secretary of the different companies. The secretary lives in Lowell. Cannot tell certainly whether anybody besides witness was present at this meeting. In 1888 and 1889 the American Bell Telephone Company had a contract with the Cleveland Company, also with the Northwestern Company, and also with the Southwestern Company of New York. The American Bell Telephone Company in 1889 recognized the Erie Telegraph and Telephone in its business transactions. It did not have any lease made directly to it. The Cleveland Company had sold its contract to the Erie Telegraph and Telephone Company. There was a perpetual lease from the Bell to the Northwestern Company, or a perpetual contract. There were dealings between the Northwestern and the Bell Company. In the case of the Northwestern the dealings were wholly with the Bell Company. It was not so of the Southwestern nor of the Cleveland. There was no direct contract between the Erie Company and the Southwestern. There was a bill of sale. The Erie owned the contract between the Southwestern and the Bell. The organization of Southwestern and Cleveland Companies was kept up merely for local rights. The Northwestern Company owned property and paid dividends upon its shares. In 1888 the dividends of the Northwestern Company were paid directly to the Erie Telegraph and Telephone Company to the extent of seventy per cent. and directly to the American Bell Company to the extent of thirty per cent. The dividend check ran directly from the Northwestern Telephone Exchange Company to the Erie Telegraph and Telephone Company.

There were no books kept in Albany showing the holdings of Southwestern shares or of Northwestern shares or of Cleveland shares. Witness attended the meetings of the Northwestern, Southwestern and Cleveland Companies and voted as a representative of the Erie Telegraph and Telephone Company, and not in his own individual right.

It was agreed that defendant did not bring in any list of
25 property as trustee until February 24, 1890, when he brought in to the assessors the list, a copy of which is hereto annexed, marked "G," and made a part hereof, and that he filed with the assessors a petition for abatement of the tax upon him as trustee.

The foregoing being all the material evidence in said cause, the defendant asked the court to rule as follows:

1. The plaintiff cannot maintain this action.
2. The plaintiff is not authorized by law to maintain this action.
3. Upon the testimony the plaintiff is not entitled to recover.
4. There is not sufficient evidence of a proper demand for payment having been made upon the defendant to enable the plaintiff to recover interest in this action.
5. The statute of limitations has run in favor of the defendant, and the plaintiff cannot recover in this action.
6. The assessment levied upon the defendant was illegal.
7. It does not appear that the defendant held in trust any personal property upon which he could be taxed for the year 1889.
8. It does not appear that the defendant held in trust any shares in the Erie Telegraph and Telephone Company, Cleveland Telephone Company, Northwestern Telephone Exchange Company, or the Southwestern Telegraph and Telephone Company, upon which he could be taxed for the year 1889.
9. In order to tax one as trustee for personal property it is essential that the trust property should be in the possession or control of the trustee.
10. In order to tax one upon certificates of shares in a corporation it is essential that the certificates should be in his possession or control.
11. Certificates of shares in corporations of the character of the Erie Telegraph and Telephone Company, of the Cleveland Telephone Company, the Northwestern Exchange Company, are not subject to taxation under the laws of this Commonwealth.

26 12. Through the manner in which the assessors levied this tax upon the defendant it is illegal and void.

13. Through the method adopted by the assessors in arriving at the valuation for this tax it is illegal and void.
14. Through the manner in which this tax was levied its recovery in this action would be the taking of private property for public purposes without adequate compensation being made therefor, contrary to the provisions of the constitution of this Commonwealth and of the Constitution of the United States.
15. Through the manner in which this tax was levied its recovery in this action would be the deprivation of the defendant of his property without due process of law, contrary to the provisions of the Constitution of the United States.
16. Through the method adopted by the assessors in arriving at the valuation for this tax its recovery in this action would be a deprivation of the defendant of his property without due process of law, contrary to the provisions of the Constitution of the United States.
17. The assessors in assessing the defendant for this tax did not "ascertain as nearly as possible the particulars of the" estate as provided by law and therefore this tax is illegal and void.
18. Unless the assessors ascertain as nearly as possible the par-

ticulars of personal estate before they assess it the tax is illegal and void.

19. If the assessors grossly overvalued the personal property of defendant, carelessly regardless of defendant's right to a just and equitable assessment, the assessment is illegal and void.

20. If the assessors valued the personal estate of defendant from any other motive than that of arriving at the just value of the identical personal property held by the defendant the assessment is illegal and void.

21. If the assessors assessed this tax to the defendant not upon the value of the shares in his name as trustee but upon the value
27 of the shares of the Erie Telegraph and Telephone Company the assessment is illegal and void.

22. If the assessors assessed this tax in the manner stated in the foregoing paragraph the recovery of this tax is contrary to the provisions of the constitution of this Commonwealth and of the Constitution of the United States as a taking of private property for public purposes without adequate compensation being made therefor and as depriving the defendant of his property without due process of law.

23. The levy and collection of the tax for the recovery of which this action is brought are contrary to the provisions of article X of part first of the constitution of this Commonwealth, and the action cannot be maintained.

24. The levy and collection of the tax for the recovery of which this action is brought are contrary to the provisions of article V of the amendments to the Constitution of the United States, and the action cannot be maintained.

25. The levy and collection of the tax for the recovery of which this action is brought are contrary to the provisions of section 6 of article I of the Constitution of the United States, and the action cannot be maintained.

26. The levy and collection of the tax for the recovery of which this action is brought are contrary to the provisions of section 1 of article XIV of the amendments to the Constitution of the United States, and the action cannot be maintained.

27. The maintenance of this action is contrary to the provisions of article X of part first of the constitution of this Commonwealth, and the plaintiff cannot recover.

28. The maintenance of this action is contrary to the provisions of article V of the amendments to the Constitution of the United States, and the plaintiff cannot recover.

29. The maintenance of this action is contrary to the provisions of section 6 of article I of the Constitution of the United States, and the plaintiff cannot recover.

28 30. The maintenance of this action is contrary to the provisions of section 1 of article XIV of the amendments to the Constitution of the United States, and the plaintiff cannot recover.

31. Unless the jury shall find that the income of the personal property alleged to have been held in trust by the defendant was

receivable by him, for payment to another, the plaintiff cannot recover.

32. There is no sufficient testimony upon which the jury can so find.

33. The alleged personal property on which the assessment, upon which this action is brought, was made is not personal estate within the provisions of section 4 of chapter XI of the Public Statutes, and the plaintiff cannot recover.

34. Unless the jury shall find the assessors made reasonable effort to ascertain the particulars of the personal estate upon which the assessment was made, the plaintiff cannot recover.

35. There is no sufficient testimony upon which the jury can so find.

36. Unless the jury shall find that the assessors made an estimate at its value of the personal estate upon which the assessment was made the plaintiff cannot recover.

37. There is no sufficient testimony upon which the jury can so find.

38. The assessment upon which this action is brought is not proportional, reasonable and equal, as required by part 2 of chapter 1 of section 1, article IV, of the constitution of the Commonwealth, and the plaintiff cannot recover.

The defendant also asked the court to submit to the jury the following questions:

Was the assessment upon the defendant as a trustee levied upon certain shares of the S. W. Tel. & Tel. Co., of the Cleveland Tel. Co., and of the N. W. Tel. Ex. Co., alleged to be held by him?

Did the defendant have in his possession or control May 1, 1889, any of the said shares as trustee?

Did the defendant have any personal property May 1, 1889, which he held in trust for another?

29 What was the value, if any, May 1, 1889, of S. W. Tel. & Tel. Co. shares, Cleveland Tel. Co. shares, and N. W. Tel. Ex. Co. shares?

The court refused to give the rulings as above requested, to which refusals the defendant duly excepted, and refused to submit to the jury the above questions, to which refusals the defendant duly excepted; but ruled:

First. That the way and manner in which the description of the property had been set forth in the valuation list was a proper form in which it should be set forth.

Second. That the statute of limitations had not run in favor of the defendant in this cause; and

Third. That the only questions to be determined by the jury were, (*a*) whether the assessors ascertained as nearly as possible the particulars of the personal estate held by the defendant as trustee for the purposes of making this assessment, and (*b*) whether having obtained those particulars they estimated such property at its just value according to their best information and belief.

The jury found for the plaintiff in the sum of $4,229.92, and the

defendant, being aggrieved by the rulings and refusals of the court, as aforesaid, prays that his exceptions may be allowed.

By his attorneys, SHEPARD, STEBBINS & STORER.
BURKE & CORBETT.

Filed February 24, 1899.

Exceptions allowed.

JOHN H. HARDY, *J. S. C.*

"A."

Know all men by these presents, that we William H. Bent, Chas. J. Glidden, J. Clark Glidden, Andrew K. Pruyn, Wm. F. Hourigan, who have associated ourselves for the purpose of owning, constructing, using and maintaining lines of electric telegraph within the States of New York, Ohio, and Pennsylvania, Minnesota, Wisconsin, Texas, Arkansas and Dakota Territory, and of having and exercising the powers conferred by an act of the legislature of the State of New York entitled, "An act to provide for the incorporation and regulation of telegraph companies," passed April 12, 1848, and the acts of said legislature amendatory thereto, do, under and in pursuance of the requirements of said act, make, sign, seal and acknowledge this certificate and certify as follows:

1st. The name assumed to distinguish such association and to be used in its dealings and by which it may sue and be sued, shall be the Erie Telegraph and Telephone Company.

2d. The general route of the line of telegraph of said association will be from a point or points in the city of Troy, to a point or points in the city of Albany, both within the State of New York, and from a point or points within the city of Cleveland to a point or points within the various cities and towns, within the county of Cuyahoga and adjoining counties in the State of Ohio, along all railroads, bridges, highways, streets and other convenient ways and courses leading thereto, and from a point or points in the city of Buffalo in the State of New York, to a point or points in the city of Cleveland aforesaid, by the most direct route and from a point in the city of Minneapolis, Minn., to Galveston, Texas, and intermediate points and to various other points in the States aforesaid by the most direct route.

3d. The capital stock of such association shall be one million dollars, divided into ten thousand shares of a par value of one hundred dollars each, with the right to increase the same by vote of the directors to five million dollars by adding thereto forty thousand shares of a par value of one hundred dollars each.

4th. The names and places of residence of the stockholders and the number of shares held by them respectively are as follows:

31

Name.	Residence.	No. of shares.
Wm. H. Bent	Lowell, Mass	4950
Chas. J. Glidden	Lowell, Mass	4950
J. Clark Glidden	Saratoga, N. Y	98
Andrew K. Pruyn	Albany, N. Y	1
Wm. F. Hourigan	Albany, N. Y	1

5th. The period at which such association shall commence, is the date when it becomes a body corporate under the acts aforesaid, and it shall terminate at the expiration of fifty years from that date.

In witness whereof, we have hereunto set our hands and seals this twenty-second day of June, 1883.

WILLIAM H. BENT. [L. S.]
CHAS. J. GLIDDEN. [L. S.]
J. CLARK GLIDDEN. [L. S.]
ANDREW K. PRUYN. [L. S.]
WILLIAM F. HOURIGAN. [L. S.]

STATE OF NEW YORK, } ss:
County of Albany, }

JUNE, 1883.

On this 22d day of June 1883, before me personally came William H. Bent, Charles J. Glidden, J. Clark Glidden, Andrew K. Pruyn and William F. Hourigan by me known and known to me to be the persons described in the foregoing instrument and who severally acknowledged that they signed the same for the purposes therein set forth.

DAVID A. THOMPSON, [L. S.]
Albany Co., N. Y.

(Endorsed:) Certificate of incorporation of the Erie Telegraph and Telephone Company.

STATE OF NEW YORK, }
Office of Secretary of State. }

Filed and recorded June 22, 1883.

ANSON O. WOOD,
Deputy Secretary of State.

32 STATE OF NEW YORK, } ss:
Office of the Secretary of State, }

I have compared the preceding with the original certificate of incorporation of the Erie Telegraph and Telephone Company with acknowledgement thereto annexed, filed and recorded in this office on the twenty-second day of June 1883, and do hereby certify the same to be a correct transcript therefrom and of the whole of the said original.

Witness my hand and the seal of office of the secretary of state, at

the city of Albany, this eighth day of January one thousand eight hundred and eighty-seven.

[SEAL.] FREDERIK COOK,
Secretary of State.

"G."

To the assessors of the city of Lowell:

Upon the first day of May, A. D. 1889, there stood, as he is informed, in the name of the undersigned, Charles J. Glidden, a resident of said city, on Middlesex street, precinct 3, ward 4 thereof, as trustee for the Erie Telegraph and Telephone Company, a corporation under the laws of the State of New York, two thousand (2000) shares of the capital stock of the Southwestern Telegraph and Telephone Company, a corporation under the laws of the State of New York, and doing business in the States of Arkansas and Texas; also one hundred and forty-nine (149) shares of the capital stock of the Cleveland Telephone Company, a corporation under the laws of the State of Ohio, and doing business in the said State of Ohio; and also, thirteen hundred (1300) shares of the capital stock of the Northwestern Telephone Exchange Company, a corporation under the laws of the State of Minnesota and doing business in the said State of Minnesota; but the undersigned, as said trustee, never had in his possession, control or management a certificate of stock or any of them in any of said corporations, nor has he ever had
33 any of the income, profits, or proceeds arising from the same, either upon the first day of May or subsequent thereto, and neither upon the first day of May nor at any time previous or subsequent thereto, could have delivered to any person any of said stock, nor could have transferred or conveyed the same, or any of the income or profits arising therefrom. The above is all the personal property in the name of the undersigned as trustee on the said first day of May, and of this he is not legally the owner and is not liable to be taxed therefor.

CHAS. J. GLIDDEN.

MIDDLESEX, *ss:*

LOWELL, *Feb'y* 24, 1890.

The above-named Chas. J. Glidden personally appeared before me and made oath that the above statement subscribed by him is just and true.

ROB'T L. READ,
One of the Assessors of the City of Lowell.

34 *Resolution for the Assessment of Taxes for the Year Eighteen Hundred Eighty-nine and the Appropriation of Money.*

City of Lowell, in the year eighteen hundred and eighty-nine.

Resolved, by the board of aldermen and common council of the city of Lowell, in city council assembled, as follows:

1st. That the sum of eight hundred sixty-four thousand one hun-

dred dollars be assessed on the polls and estates within the city of Lowell, to defray the current expenses of the present municipal year, and that the same be appropriated as follows:

For schools, one hundred sixty thousand dollars	$160,000.00.
For school-houses, twenty-five thousand dollars	25,000.00.
Roads and bridges, seventy thousand dollars	70,000.00.
For paupers, fifty-five thousand dollars	55,000.00.
For police, sixty-eight thousand dollars	68,000.00.
For fire department, seventy-eight thousand dollars	78,000.00.
For sewers and drains, eighteen thousand dollars	18,000.00.
For commons, seven thousand dollars	7,000.00.
For printing and advertising, six thousand dollars	6,000.00.
For lighting, fifty-seven thousand dollars	57,000.00.
For public buildings, sixteen thousand dollars	16,000.00.
For library, fourteen thousand five hundred dollars	14,500.00.
For health, twenty thousand dollars	20,000.00.
For salaries, nineteen thousand five hundred dollars	19,500.00.
Aid for indigent soldiers and sailors, four thousand dollars	4,000.00.
Interest, seventy thousand dollars	70,000.00.
City debt, one hundred thousand two hundred dollars	100,200.00.
Sinking fund for water debt, twenty-five thousand dollars	25,000.00.
Sinking fund for loan of 1880, four thousand dollars	4,000.00.
	$817,200.00.
35 City Hall building lot sinking fund, seven thousand dollars	7,000.00.
Aiken Street sinking fund, sixteen thousand dollars	16,000.00.
Sinking fund for high-service water supply, eighteen hundred dollars	1,800.00.
Sinking fund for loan of 1882 twenty-five hundred dollars	2,500.00.
Sinking fund for building at city farm, five thousand dollars	5,000.00.
Central bridge sinking fund, nine thousand six hundred dollars	9,600.00.
Interception-sewer fund, five thousand dollars	5,000.00.
	$864,100.00.

2nd. That all sums of money received for rent of buildings situated on the City Hall building lot, be placed to the credit of that account, and that all other sums of money received for rent of buildings be placed to the credit of the reserved fund.

3rd. That all sums of money received into the treasury from sources other than loans, taxes, and sums otherwise provided for, be placed to the credit of the appropriation or account to which it properly belongs.

4th. That interest at the rate of seven per cent. per annum be charged upon all taxes under this resolution which remain unpaid from and after the twentieth day of October 1889, until the same shall be paid, and such interest shall be added to and considered a part of said taxes.

5th. That a copy of this resolution be furnished to the assessors of taxes by the city clerk on or before the first day of April 1889.

In common council March 12, 1889
Passed

WILLIAM E. WESTALL, *President.*

36 In board of aldermen March 19, 1889.
Passed

ROSWELL M. BOUTWELL, *Chairman.*

Approved March 22, 1889.

CHARLES D. PALMER, *Mayor.*

A true copy.
Attest: GIRARD P. DADMAN, *City Clerk.*

37 And on the sixth day of September, A. D. 1901, a rescript from the supreme judicial court for said Commonwealth was filed in the case in words following, to wit:

COMMONWEALTH OF MASSACHUSETTS:

Supreme Judicial Court for the Commonwealth, at Boston, Sept. 5, 1901.

In the case of

JOHN H. HARRINGTON, Collector,
vs.
CHARLES J. GLIDDEN, Trustee,

pending in the superior court for the county of Middlesex.

Ordered, that the clerk of said court in said county make the following entry under said case in the docket of said court; viz,—

Exceptions overruled.
By the court,

HENRY A. CLAPP, *Clerk.*

September 5, 1901.

And on the seventh day of October, A. D. 1901, judgment was entered for the plaintiff for the sum of four thousand nine hun-
38 dred thirty-eight dollars and forty-four cents damage, and for costs of suit taxed at seventy dollars and twenty-one cents.

All and singular which premises we have held good by the tenor of these presents to be exemplified.

In testimony whereof we have caused the seal of our said court to be hereto affixed.

Witness, Albert Mason, Esquire, chief justice of said superior court, at Boston this twelfth day of November, in the year one thousand nine hundred and one.

Seal of the Superior Court.

THEO. C. HURD, *Clerk.*

39 COMMONWEALTH OF MASSACHUSETTS, *Middlesex*, } ss:

Superior Court, October Sitting, 1901.

JOHN H. HARRINGTON, Collector, vs. CHARLES J. GLIDDEN, Trustee. } No. 773.

Application for Writ of Error.

To the honorable the chief justice of the superior court:

Your petitioner, Charles J. Glidden, trustee, of Lowell in the county of Middlesex and Commonwealth of Massachusetts, shows unto your honor that heretofore, to wit, on the first Monday of October A. D. 1901, at Cambridge, in the said county of Middlesex, in an action of contract, in which John H. Harrington, collector, was plaintiff, and your petitioner was defendant, final judgment was rendered against your petitioner in the superior court within and for the said county of Middlesex, being the highest court of law or equity of the said State in which a decision could be had in said suit, as appears by the records of said superior court. And your petitioner says that in the trial of said case there was drawn in question the validity of a statute of, and authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, and laws, of the United States, and the decision was in favor of such their validity; and wherein was drawn in question the construction of a clause of the Constitution, and of a
40 treaty, and statute of, and commission held under, the United States, and the decision was against the title, right, privilege, and exemption, specially set up and claimed under such clause of the said Constitution, treaty, statute, and commission, and a manifest error hath happened to the great damage of your petitioner.

Wherefore, your petitioner prays that a writ of error to the Supreme Court of the United States may issue in due form of law, and he will ever pray, &c.

CHARLES J. GLIDDEN.

HARVEY N. SHEPARD, *Of Counsel.*

Filed November 5, 1901.

41 COMMONWEALTH OF MASSACHUSETTS, *Middlesex*, } ss:

Superior Court, October Sitting, 1901.

JOHN H. HARRINGTON, Collector, vs. CHARLES J. GLIDDEN, Trustee. } No. 773.

Assignment of Errors.

The defendant in this action, in connection with his petition for a writ of error, makes the following assignment of errors, which he avers occur-ed upon the trial of this cause, to wit:

1. The court erred in not ruling that through the manner in which this tax was levied its recovery in the action would be the taking of private property for public purposes without adequate compensation being made therefor, contrary to the provisions of the Constitution of the United States.

2. The court erred in not ruling that through the manner in which this tax was levied its recovery in the action would be the deprivation of the defendant of his property without due process of law, contrary to the provisions of the Constitution of the United States.

3. The court erred in not ruling that through the method adopted by the assessors in arriving at the valuation for the tax its recovery in the action would be a deprivation of the defendant of his
42 property without due process of law, contrary to the provisions of the Constitution of the United States.

4. The court erred in not ruling that, if the assessors assessed the tax to the defendant, not upon the value of the shares, but upon the value of the shares of the Erie Telegraph and Telephone Company, the recovery of the tax would be contrary to the provisions of the Constitution of the United States as taking of private property for public purposes without adequate compensation being made therefor and as depriving the defendant of his property without due process of law.

5. The court erred in not ruling that the levy and collection of the tax for the recovery of which the action was brought were contrary to the provisions of article V of the amendments to the Constitution of the United States, and that the action could not ne maintained.

6. The court erred in not ruling that the levy and collection of the tax for the recovery of which the action was brought were contrary to the provisions of section 6 of article I of the Constitution of the United States, and that the action could not be maintained.

7. The court erred in not ruling that the levy and collection of the tax for the recovery of which the action was brought were contrary to the provisions of section 1 of article XIV of the amendments to the Constitution of the United States, and that the action could not be maintained.

43 8. The court erred in not ruling that the maintenance of the action was contrary to the provisions of article V of the amendments to the Constitution of the United States, and that the plaintiff could not recover.

9. The court erred in not ruling that the maintenance of the action was contrary to the provisions of section 6 of article I of the Constitution of the United States, and that the plaintiff could not recover.

10. The court erred in not ruling that the maintenance of the action was contrary to the provisions of section 1 of article XIV of the amendments to the Constitution of the United States and that the plaintiff could not recover.

Respectfully submitted by

HARVEY N. SHEPARD, *Of Counsel.*

Filed November 5, 1901.

44 COMMONWEALTH OF MASSACHUSETTS:

BOSTON, *November* 11, 1901.

I certify the annexed to be a true copy of the opinion of the supreme judicial court in the case of John H. Harrington *vs.* Charles J. Glidden decided on the 5th day of September, 1901.

HENRY W. SWIFT,
Reporter of Decisions.

44½ HAMMOND, *J.:*

In this action the plaintiff as collector seeks to recover a tax assessed upon the defendant as trustee. It is contended by the defendant that, even if he was a trustee, such was the nature and location of the property and his relation to it that he was not taxable as such. The first question is whether this ground of the defence is open to the defendant in this action.

The assessment and collection of taxes is regulated by statute. The assessors are public officers, and, while their duties are of a quasi-judicial nature, their jurisdiction is limited, based sometimes upon the residence of the person assessed, or of some other person interested in the property and sometimes upon the situation of the property. Without reciting in detail the statutes, it is sufficient to say that they provide that each person may bring in a sworn
45 list of the personal property for which he in any capacity should be taxed, and this list is to be received by the assessors as true (except as to valuation) unless he, being required thereto by the assessors, refuses to answer on oath all necessary inquiries as to the nature and amount of his property. In case a person does not bring in a list the assessors shall ascertain as nearly as possible his taxable property, and "make an estimate thereof at its just value according to their best information and belief," and "such estimate shall be conclusive," except in certain cases not here material. Pub. Sts. c. 11, §§ 38–42. Any person aggrieved by an assessment may apply for an abatement to the assessors, and, by appeal from their

decision, to the county commissioners, or superior court, and on questions of law may reach this court, but no person shall have an abatement unless he files a list as above provided, Pub. Sts. c. 11, §§ 69–72. St. 1890, c. 127.

This plain, adequate and complete remedy for the correction of errors, whether of law or fact, is the only one provided by our statutes; and when the assessors are acting within their jurisdiction it must be regarded as exclusive in accordance with the well-known rule that, "when a new right is created by statute which at the same time provides a remedy for any infringement of it, that remedy must be pursued." *Osborne v. Danvers*, 6 Pick. 98, 99.

46 But, when the assessors are acting outside their jurisdiction, their acts are absolutely void. Where, for instance, the tax ordered is illegal because for a purpose not authorized by law, the assessment is void. The assessors have no jurisdiction. *Bangs v. Snow*, 1 Mass. 181. *Stetson v. Kempton*, 13 Mass. 272.

So where the assessment is upon a non-resident for personal property claimed by reason of its location in the town where the assessment is made to be taxable there, if it appears that the non-resident had no personal property assessable there the tax is wholly void, even if he had taxable real estate there. The reason is that, the person assessed not being resident in the town where the assessment is made and so not within the jurisdiction of the assessors, their right to assess him, so far as respects personal property, depends upon whether he has assessable personal property in the town. Unless he has such property there their acts are void for want of jurisdiction.

Preston v. Boston, 12 Pick. 7, a leading case, affords a good illustration of the application of this principle. The plaintiff being domiciled in Medford and having taxable personal estate, but having in Boston only real estate, was taxed in the latter place for both real and personal estate. He paid the taxes, and in an

47 action to recover back the money it was held that while the real-estate tax was valid the personal-estate tax was invalid, and he recovered that back. The ground of the decision as to the personal property was that the plaintiff was not an inhabitant of Boston, and so not liable to be taxed there at all on his personal property. As to that the assessors had no jurisdiction. In giving the opinion Shaw, C. J. said: "One not liable, not domiciled, is not within the jurisdiction of the assessors, any more than a stranger from another State who should happen to be lodging at a hotel when the tax was assessed. The whole proceeding therefore in regard to him was without authority *ab initio*." See also *Sumner v. Dorchester Parish*, 4 Pick. 331; *Inglee v. Bosworth*, 5 Pick. 498. Where, however, there is personal property of a non-resident which is taxable in the town where it is situated, the assessors of that town have jurisdiction, and consequently the only remedy of the person aggrieved is by abatement. *Little v. Greenleaf*, 7 Mass. 236. *Gray v. Kettell*, 12 Mass. 161.

Again, where a corporation owns real and personal estate and is taxable for the real and not for the personal estate, a tax upon the

personal estate is absolutely void, *Amesbury Cotton & Woolen Manuf. Co. v. Amesbury*, 17 Mass. 461, *Boston Water Power Co. v. Boston*,
48 9 Met. 199, *Salem Iron Co. v. Danvers*, 10 Met. 514, the ground of the decision in these cases being that the corporation is not an inhabitant of the town for purposes of taxation. And the same principle is applied where the assessors undertake to assess a tax in excess of what is called for, or is allowed by law. *Joyner v. Egremont School District*, 3 Cush. 567. *Cone v. Forrest*, 126 Mass. 98.

These and similar cases all proceed upon the principle that an assessment made by assessors who have no jurisdiction is not the assessment authorized by statute. It is no assessment at all and is absolutely void. As it is not the statutory proceeding the statutory remedy is not exclusive.

Such an assessment therefore can be attacked collaterally in an action of tort against the assessors where such an action will lie, or in an action against the town to recover back the money paid, or in defence to an action by the collector. These general remedies are not for those who are aggrieved by assessors acting within their jurisdiction, but are allowable to redress wrongs inflicted by persons who pretend to be assessors but who are not such because acting without jurisdiction.

Where, however, the tax is for a legal purpose and the assessors have jurisdiction, whether it is based upon the fact that the person assessed be an inhabitant of the town where the assessment is
49 made or upon the situation of the property or any other jurisdictional fact shown to exist, and they proceed essentially in accordance with the statutes, their decision as to the nature and amount of the taxable property of a person who has not brought in a list is valid. It cannot be attacked in any collateral proceeding, but must stand until changed in a proceeding under the statute for abatement. There are sound and obvious reasons for this rule, which are set forth at some length in *Lincoln v. Worcester*, 8 Cush. 55, 65, 66.

Among the numerous cases where the doctrines above stated have been applied by this court, see in addition to those already cited, *Bates v. Boston*, 5 Cush. 93; *Howe v. Boston*, 7 Cush. 273; *Browne v. Boston*, 2 Gray, 294; *Ingram v. Cowles*, 150 Mass. 155; *Carleton v. Ashburnham*, 102 Mass. 348.

The defendant in the case at bar was an inhabitant of Lowell, and he had taxable personal property there. The only list he brought to the assessors was that of February 24, 1890, several months after the warrant had been committed to the collector, and even that purported to relate only to the property held by him as trustee. Being an inhabitant of the city and having taxable personal property there, he was within the jurisdiction of the assessors. While the tax was in part against him as an individual and in part as trustee, still it was all a personal tax. If valid, the collector could sue, distrain or arrest as well for the one part as for the other. The assessors called for a sworn list of taxable personal property. Such a list should
50 contain all such property held by a person either as an individual or in a representative capacity. In the absence of

such a list from the defendant the assessors proceeded to consider his case. They had before them not only the question whether he was taxable for any personal property held by him as an individual but also whether he was taxable for any such property held by him in a representative capacity. The whole case was before them and it was their duty to investigate and decide it. That duty they performed, and they decided that he had taxable personal property not only as an individual but as a trustee, and they made an estimate thereof. The jury have found that in performing this work they "ascertained as nearly as possible the particulars of the personal estate held by the defendant as trustee for the purpose of making this assessment," and that "having obtained those particulars they estimated such property at its just value according to their best information and belief." We are of opinion that the evidence fully justifies the finding. Indeed, the assessors seem to have been impressed with the importance and magnitude of the question, and to have made unusual efforts to get at the facts both as to the nature and value of the property. It is true that a tax upon real estate is separate and distinct from that on personal estate, *Preston v. Boston*, *ubi supra*, but we do not think the statutes intended that there should be a division of the tax on personal estate, so far as concerns the remedy for a person aggrieved.

51 We are not unmindful of the case of *Dorr v. Boston*, 6 Gray, 131. In that case it appeared that the plaintiff was a woman and had no taxable property in this State. As to whether the case of *Preston v. Boston*, *ubi supra*, was rightly interpreted in that case, see *Lincoln v. Worcester*, *ubi supra*, p. 62, and *Bates v. Boston*, *ubi supra*, p. 97.

So far therefore as respects the nature and value of the property and his relation to it, the grievance of the plaintiff, if any, is one of overvaluation, and his only remedy is by the statutory proceeding for abatement. He cannot avail himself of this portion of his defence in this action. *Pierce v. Eddy*, 152 Mass. 594, 596.

The objection that the description of the property is not sufficient is not tenable. *Noyes v. Hale*, 137 Mass. 266, 270, 271.

Nor is the action barred by the statute of limitations. In the early history of the Commonwealth the collector of taxes, so far as respected a tax on personal property, could collect only by demand, distress or arrest; St. 1785, c. 50, § 6; but soon after the adoption of the Constitution he was authorized in certain cases of the removal, death or marriage of a delinquent tax-payer, to bring an action at law; St. 1788, c. 4; and this remedy has been extended from time to time to other cases until finally it is applicable generally

52 to all taxes upon real or personal property. St. 1842, c. 34; 1848, c. 235; 1859, c. 171. Gen. Sts. c. 12, §§ 18, 19, 20. St. 1878, c. 189, § 4. Pub. Sts. c. 12, §§ 21, 22, 23. St. 1889, c. 334, § 7. At the date of the writ in this case the statute last cited provided that the action could be brought by the collector in his own name if the tax remained unpaid for three months after it was committed to him. He has no right of action except that given by the statute. *Crapo v. Stetson*, 8 Met. 393. *Ricker v. Brooks*, 155 Mass. 400. The

tax in question was assessed as of May 1, 1889, and the warrant for its collection was committed to the collector September 10, 1889. The statute took effect May 14, 1889. The cause of action therefore did not arise until three months after September 10, 1889, or until December 10, 1889. The action was brought July 6, 1895, a time well within the six years from the time the cause of action accrued.

The defendant's brief contains an elaborate argument in support of the proposition that our statutes relating to the assessment of taxes are unconstitutional because they do not give the party assessed an opportunity to be heard. But he does have full opportunity to be heard before the assessing board, if he desires it, before the demand becomes conclusively established against him, and that is enough. Cooley on Taxation, 361, 363, 364, and cases cited.

53 There was ample evidence of a demand upon which to base interest, and in the absence of anything to the contrary in the brief of the defendant we consider the exception on that point waived.

Without going over the exceptions further in detail, it is sufficient to say that we see no error of law made by the presiding judge at the trial.

Exceptions overruled.

54 [Endorsed:] Harrington *vs.* Glidden. Certified copy of the opinion of the supreme judicial court.

55 *Citation on Writ of Error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to John H. Harrington, collector, of Lowell, in the county of Middlesex, in the district of Massachusetts, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States at Washington, on the *thirtieth day of November current, pursuant to a writ of error filed in the clerk's office of the †superior court in and for the county of Middlesex in the Commonwealth of Massachusetts, wherein Charles J. Glidden, trustee, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Albert Mason, chief justice of the superior court aforesaid, this second day of November, in the year of our Lord one thousand nine hundred and one.

ALBERT MASON,
Chief Justice Superior Court.

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* Not exceeding 30 days from the day of signing.
† Name of court to which writ of error is directed.

56 LOWELL, *Nov.* 8, 1901.

I hereby accept service of the within writ for the defendant in error.

FRANCIS W. QUA,
City Solicitor of Lowell, Attorney for Defendant in Error.

57 COMMONWEALTH OF MASSACHUSETTS, *Middlesex*, } *ss.*:

I, Theodore C. Hurd, clerk of the superior court within and for said county of Middlesex, hereby certify that the foregoing are true copies of—

I. The record in the case of—

JOHN H. HARRINGTON, Collector of Taxes of the City of Lowell,
vs.
CHARLES J. GLIDDEN, Trustee.

II. The petition for the writ of error; and

III. The assignment of errors:

IV. The opinion of the full court: both annexed to and transmitted with the record:

V. And of all the proceedings in said case, with all things concerning the same: together with

VI. The original citation, and

VII. The acknowledgment of the service thereon.

In witness whereof, I hereunto set my hand and affix the seal of said superior court, this twelfth day of November, in the year of our Lord one thousand nine hundred and one.

[Seal of the Superior Court.]

THEO. C. HURD, *Clerk.*

Endorsed on cover: File No. 18,333. Massachusetts superior court. Term No. 199. Charles J. Glidden, trustee, plaintiff in error, *vs.* John H. Harrington, collector. Filed November 26th, 1901.